

REMARKS/ARGUMENTS

Claims 4, 19, 51, 53 and 56-57 are pending. Claims 1-3, 5-18, 20-50, 52, 54 and 55 have been canceled without prejudice or disclaimer of the subject matter they contain. Claims 4 and 19 have been amended and claims 56 and 57 have been added to encompass potentially infringing subject matter. It is believed that no new matter has been introduced. Applicant does not acquiesce to the propriety of any of the Examiner's rejections and does not disclaim any subject matter to which Applicant is entitled. *Cf. Warner Jenkinson Co. v. Hilton-Davis Chem. Co.*, 41 U.S.P.Q.2d 1865 (U.S. 1997). Further, Applicant reserves the right to file continuing applications to cover disclosed subject matter not encompassed by the currently pending claims.

REJECTION UNDER 35 U.S.C. § 103

The Office Action rejects claims 4, 19, 45, 51, 53 and 55, under 35 U.S.C. § 103(a) as allegedly being unpatentable over **JP 07145598, Granirer** (U.S. Patent No. 4,759,930), the IDS document "**Pesticidal and Toxic Chemical News**" from PROMT database (June 1994; database PROMT accession number 94:375291) and **Kalisch** (IDS reference. Cockroach Control Manual). Applicants respectfully traverse this rejection.

The pending claims recite methods of using compositions having pesticidally active ingredients consisting of rosemary oil, peppermint oil and phenyl ethyl propionate OR consisting of and rosemary oil and phenyl ethyl propionate.

The Office Action asserts that JP 07145598 discloses a method for disinfecting or controlling arachnids or mites by applying to a desired pest control location a pesticidal composition comprising 1) a pesticidally active ingredient with rosemary oil and peppermint oil and 2) a carrier in a form of additional plant oils. The Office Action further admits that although

JP 07145598 is lacking disclosure about killing cockroaches and ants, Granirer (US 4,759,930) discloses method of killing insects including cockroaches by applying composition derived from rosemary leaves and peppermint leaves. However, the Office Action admits that JP 07145598 is lacking disclosure related to the use of phenethyl propionate in the compositions in the method for controlling or killing the household pests. As such, the claims do not read on the compositions recited in the present claims.

The Office Action further asserts that the cited document "Pesticidal and Toxic Chemical News" from PROMT database discloses that rosemary oil, peppermint oil and phenethyl propionate are pesticidally active ingredients. However, there is no teaching, suggestion or motivation to select and combine the specific recited active ingredients for use in a method as presently claimed.

With respect to Kalisch, Applicants respectfully submit that the cited text from Kalisch should not be considered prior art because it was not published until 2006. The Office Action is invited to review the origin of this text which can be found at the University of Nebraska web page at: <http://pested.unl.edu/pesticide/pages/index.jsp?what=pageObjD&pageObjId=106>. As such, Applicants respectfully submit that the citation of Kalisch is misplaced and should be withdrawn.

In view of the above, reconsideration and withdrawal of this rejection are respectfully requested.

DOUBLE PATENTING

The Office Action rejects claim 19 and 53, under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claims 1-26 of U.S. Patent No. 6,531,163 in view of U.S. Patent No. 4,759,930. Although Applicants respectfully

submit a terminal disclaimer should not be required, Applicants respectfully request that this rejection be held in abeyance until an indication of allowable subject matter. If ultimately deemed necessary, an appropriate terminal disclaimer will be submitted.

CONCLUSION

If anything further could be done to place the above-captioned patent application in better condition for allowance (i.e., via Examiner's Amendment), then please contact the undersigned attorney at the telephone number listed below.

Applicant(s) hereby requests any extension of time deemed necessary for entry of this submission and any submission filed hereafter in this application or any continuing application(s). Applicant(s) makes a Conditional Petition for any relief available to correct any defect in connection with this filing, or any defect remaining in this application after this filing. The Commissioner is authorized to charge any petition fee or any deficiency in fees filed, or asserted to be filed, or which should have been filed herewith (or with any paper filed hereafter) to Deposit Account No. **14-1140 (please use reference number: WFG-4380-107)** or credit any overpayment of fees to such Deposit Account.

Respectfully submitted,

NIXON & VANDERHYE P.C.

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Special thanks to Erin Bauer, Christine Weitzel and Karen Wedding who reviewed parts of this second edition and provided valuable guidance, suggestions and contributions.

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- Fig. 1-1 "Oh oh...Looks like this is gonna be tougher than I thought!" (Jim Kalisch)
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References to products or companies in the publication are for your convenience and are not an endorsement over similar products or companies.

You are responsible for using insecticides according to the current label directions and federal and state laws. Follow label directions exactly to protect the environment and people from insecticide exposure. Failure to do so violates the law.

Preface

It has been more than 10 years since the first edition of the Cockroach Control Manual was completed. While the basic steps for effective and safe cockroach control are still the same, there are more types of control products available than there were 10 years ago. This means you have even more choices in your arsenal to help fight roaches.

The *Cockroach Control Manual* is a practical reference for persons who have had little or no training in insect identification, biology or control methods. We know most people want low toxic methods used inside their homes so we are emphasizing low-risk strategies even more than in the original edition.

We have read enough scientific literature to understand just how easy it would have been to overwhelm you with technical information. Our goal is to translate scientific jargon into everyday English so this manual is easy to read and understand. If you study this manual from cover to cover, you will be able to better understand cockroach biology and behavior and will be able to conduct a successful cockroach control program.

Author Biographies

Barbara Ogg is an Extension Educator at the University of Nebraska–Lincoln (UNL) Extension Office in Lancaster County, Lincoln, Nebraska. She has an M.S. and Ph.D. in Entomology/Pest Management from Iowa State University. In the Lancaster County office, she focuses on environmental program areas, including management of urban pests, pesticide management and safety. Other than this manual, special projects include termite education for homeowners and pest management professionals and head lice education.

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